

June 2, 2023

Provincial Land Use Plans Branch
13th Floor, 777 Bay Street
Toronto ON M7Z 2J3

To Whom It May Concern;

RE: Response to the Proposed Provincial Planning Statement Cultural Heritage Policies and Definitions

The Kawartha Lakes Municipal Heritage Committee has reviewed the proposed Provincial Planning Statement and the policies and definitions related to cultural heritage resources. The Committee would like to offer the following comments on the proposed policies:

- The removal of "significant" from both the definitions and policy 4.6.1 does not align with the relevant legislative direction under the Ontario Heritage Act and Ontario Regulation 9/06 which identifies how significance is determined. The change from "significant" cultural heritage resources to "protected" heritage resources does not recognize the need for or ability of municipalities to preserve and protect heritage resources which are not necessarily protected through the land use planning process. Given the limited resources of most municipalities to identify and protect heritage resources in advance of the receipt of development proposals, it does not allow for flexibility or scope to protect resources within the context of the land use planning process which may have a detrimental impact on communities which value these resources and liveable vibrant communities within Ontario.
- The revisions related to development and site alterations related to adjacent properties under policy 4.6.2 do not identify how a proponent can demonstrate that the heritage attributes of a protected heritage attribute will be conserved. The former policy, which expressly directs evaluation of the proposal to occur, was clearer for both a municipality and proponent as to how this policy direction could be fulfilled.
- Policy 4.6.5 correctly adds that municipalities should engage early with indigenous communities which provides additional direction as to the expectation with regard to indigenous engagement. However, further clarification as to the meaning of "early" needs to be identified within this policy to ensure expectations

between indigenous communities and municipalities are the same and reflective of the duty to consult as delegated to municipalities by the Crown.

- Similarly, the scoping of the matters on which municipalities must engage with indigenous communities is problematic within this policy. As written, the policy direct planning authorities to engage in relation to “archaeological resources, built heritage resources, and cultural heritage landscapes” as opposed to “cultural heritage and archaeological resources” more broadly. This limits the direction to municipalities to engage on matters related to intangible indigenous cultural heritage and other heritage resource that do not fall within the specific categories mentioned in the proposed policies. This has the potential to violate indigenous treaty rights and the constitutional duty to consult by limiting the scope of consultation and should be reconsidered.
- The removal of municipal discretion in defining the definition of adjacent is problematic in light of the many municipal Official Plans across the province which have alternative or expanded definitions of adjacent. In particular, it is problematic in rural municipalities where properties may be visually contiguous but not legally contiguous through land features such as unopened road allowances and where there may be substantial scope for impact on an adjacent heritage property.
- The change in definition of archaeological resources means that archaeological fieldwork is no longer required to identify and evaluate archaeological resources. This has the potential to significantly impact development by not undertaking appropriate on-site due diligence prior to development approval and increases the likelihood of unexpected finds during construction and the delay of project completion.
- This change in definition to archaeological resources and the removal of the requirement to do fieldwork may also have the potential to impact indigenous treaty rights by not requiring a level of due diligence that could identify indigenous archaeological concerns on a site and identify mitigation measures prior to construction. Through a lack of due diligence, there is the potential to have a negative impact on indigenous cultural heritage resources, which may result in delays for development proponents, challenges for municipalities and potential violation of treaty rights.
- The new definition for areas of archaeological potential notes that areas are to be evaluation using processes and criteria established under the Ontario Heritage Act. Theses processes and criteria do not exist and will need to be established for this definition to mean anything.
- The new definition of heritage attributes limits the heritage attributes of a property to physical features on a property and exclude a range of intangible heritage attributes that may have a significant bearing on the cultural heritage value of the property. This definition does not align with the criteria identified for

designation under Ontario Regulation 9/06 which explicitly identify categories for evaluation based on intangible attributes. From a more practical perspective, it limits the ability of municipalities to address attributes such as views and viewscapes when evaluating a development proposal which may have significant impact on both a heritage property and streetscapes and landscapes in general and, by extension, a substantial impact on how communities develop and livability for their residents.

- Similar to other amendments being proposed, the change of definition to heritage attributes also has the potential to impact indigenous treaty rights by limiting the scope of heritage attributes as many heritage attributes related to indigenous cultural heritage resources are intangible and cultural features. The inability to consider these within a development proposal may have substantial impact on indigenous cultural heritage resources and limit the ability of municipalities to fulfil their delegated obligations with regard to the duty to consult to mitigate impact on indigenous cultural heritage resources.

The Committee recognizes that the province is reviewing and updating provincial policies and legislation to help advance the construction of new homes across the province. The Committee recognizes that new and affordable homes are needed in our communities and supports smart and sustainable growth which benefits Ontario residents and communities. However, as the province grows, the Committee would like to emphasize that in Kawartha Lakes, as in communities throughout Ontario, cultural heritage resources are significant and important places in our communities that promote our history, confer pride of place on our residents and promote economic development and investment in unique and desirable places and spaces. The policies contained within the new Provincial Planning Statement directly impact the ability of local communities to protect their heritage resources and provide livable, vibrant and healthy communities for current and future residents.

Sincerely,

A handwritten signature in cursive script that reads "Athol Hart".

Athol Hart
Chair, Kawartha Lakes Heritage Committee